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H.B. 5326 – AAC the Affordable Housing Appeals Process
Housing Committee public hearing – February 28, 2023

Recommended Committee action: OPPOSE

Part 1 – Statement in support of 8-30g

The Affordable Housing Appeals Procedure (C.G.S. 8-30g) is a critically important affordable housing anti-exclusionary zoning and fair housing law which helps make it possible to build long-term affordable housing in suburban and outlying towns. It thereby helps expand housing opportunities available to households of low and moderate income, gives alternatives to families living in center cities, and increases the likelihood that all Connecticut towns will help meet regional housing needs. Its existence is essential to the implementation of municipal obligations under the Zoning Enabling Act (C.G.S. 8-2), which requires that all municipal zoning regulations "provide for the development of housing opportunities, including opportunities for multifamily dwellings" for residents of the town and the region and that they "promote housing choice and economic diversity in housing, including housing for both low and moderate income households."

Since its original adoption in 1989, the Act has undergone many amendments, including a full review and revision in 2000 based upon the report of the Blue Ribbon Commission on Affordable Housing. The changes contained in P.A. 00-206 significantly strengthened the affordability requirements of the Act, improved the information available to towns, and rewarded towns in which a substantial amount of new affordable housing is built with a moratorium from the Act. The affordability provisions are particularly important. First, unlike most statutes, which measure affordability based on area median income, 8-30g requires the use of the lower of area or state median income. This produces rental housing, particularly in lower Fairfield County, that is significantly more affordable than is found in most of the rest of the housing market. Second, unlike statutes and ordinances that affordable set-asides be for households below 80% of median income, 8-30g requires that 15% of the units serve households below 60% of median income, a significantly deeper affordability requirement.

The Affordable Housing Appeals Procedure has proven itself repeatedly as a good, balanced law which helps reduce the negative impact of exclusionary zoning. At the same time, when zoning commissions have had good reason for turning down an affordable housing application, the commissions' decisions have been upheld by the courts. Commissions in fact win almost a third of appeals under the Act. In addition, the Act has made zoning commissions more willing to give serious consideration to affordable housing applications and has, in some cases, given formerly resistant towns the incentive necessary to take the initiative and affirmatively seek out ways to promote the development of affordable housing within their communities. We are now also seeing voluntary approvals of 8-30g applications in a number of towns — something was nearly unheard of twenty years ago.

Moreover, the moratorium provisions of the act have in fact served the purpose for which they were intended. They have incentivized towns to work with developers so as to allow the town to obtain a moratorium. New Canaan, Westport, Milford, Suffield, and South Windsor are the most recent towns to earn a first moratorium. Brookfield, Darien, Berlin, and Trumbull have received two moratoriums. This illustrates a related purpose. Once a town obtains a moratorium, it can seriously explore how to plan and shape development in a way that will ultimately lead to a second moratorium.

C.G.S. 8-30g has established itself as a workforce housing statute that speaks directly to Connecticut's housing crisis, which is reflected in the difficulties of 25- to 35-year-olds finding housing they can afford. It is well known that, in suburban and outlying towns, persons who work in the town -- from teachers and police officers to nurses and secretaries — often cannot afford to live in the town. This makes preservation of 8-30g as a strong statute all the more important. We strongly urge the General Assembly to resist all efforts to weaken the statute and instead to assure that it will continue to operate at full strength.

Part 2 – Testimony on H.B. 5326 – AAC the Affordable Housing Appeals Process

Section 1 of this bill proposes to count unrestricted privately-owned housing toward the 10% exemption from the Affordable Housing Appeals Procedure Act (C.G.S. 8-30g) without increasing the exemption threshold to a much higher percentage. The bill reflects a fundamental misunderstanding of the 10% exemption itself. As is evident from the definitions in the statute, it is an exemption for towns highly impacted by government-assisted housing, supplemented by housing with enforceable affordability deed restrictions. It is not, and never has been, a measure of how much housing in the town is "affordable" in lay terms. It is instead a trigger used to determine in which towns, as a matter of policy, a developer who is willing to provide sufficient long-term housing affordability should have a right to challenge restrictive zoning practices that would otherwise exclude the development.

The 10% exemption was borrowed from Massachusetts because it worked there, and in fact it has worked here as well. It has excluded, on a consistent basis, approximately 30 Connecticut towns that are most impacted by the presence of government-assisted housing. To implement the policy behind 8-30g, a trigger based on all low-cost housing in the town, assuming that such a count could realistically me made, would have to be much higher – probably more like 75% or 80% -- to match the housing need for which 8-30g exists.

Counting unrestricted housing without changing the exemption trigger would completely undermine the act by exempting most of the towns that 8-30g was designed to reach, without their generating any additional low-cost housing. Connecticut's affordable housing needs can only be met by producing more housing, not by relabeling towns so as to exempt them from the process designed to generate that housing.

Even if the threshold for exemption were raised to, say, 80%, the formula proposed in H.B. 5326 would not be workable or appropriate. Affordability under Connecticut law – not merely under 8-30g – is determined by the ratio of housing costs to income. The dollar amount of mortgage payments is one aspect of housing cost but it is incomplete. For ownership housing, to which the bill seems to be directed, the costs of heat, utilities, insurance, and taxes must also be added in. The result must then be compared with the occupant's income to determine whether the costs do or do not exceed 30% of household income. Municipalities do not know the income of each household. It appears to us that the gathering of that information, most of which is not public, would involve major problems.

Legislators should not be misled by the use of the word "affordable." With the benefit of hindsight, the choice of that word was unfortunate and has caused endless misunderstanding. It was chosen to try to avoid the implication that "government-assisted" meant "public housing." The 10% exemption list includes a variety of types of government-assisted housing, including Section 8 vouchers, RAP certificates, and CHFA first-time homebuyer mortgages. Unfortunately, it has led to the misleading use of the term that drives H.B. 5326.

We also believe that the focus of suburban towns on the 10% exemption is itself misdirected. The most important change in 8-30g was the adoption in 2000 of its moratorium provisions, which provide workable, achievable incentives for every town. This is demonstrated by the fact that even some of the wealthiest, most exclusive Connecticut towns have been able to obtain a four-year moratorium when actual housing units are developed there that meet 8-30g standards. The moratorium provisions are carefully incentivized to reward towns most for the production of the housing least likely to be encouraged by the town on its own. If the town proactively uses the four years of a moratorium to encourage the development of additional housing – on its own terms – it can obtain a second and a third moratorium. The moratorium system has worked, and towns can and should put their focus there.

8-30g is an effective statute precisely because it is built around actual proposals to build housing. It is sometimes called a "builder's remedy," because the statute cannot be used unless there is actual housing that will be built if the application is approved. This distinguishes it from planning documents, which may never produce any actual units of housing, no matter how receptive to housing development they may be. The Connecticut experience shows that it has worked. It should not be weakened.